

REMARKS

Claims 1-28 are in this case. The Examiner has restricted the claims into four Groups. Group I (Claims 25-28) is drawn to compounds. Group II (Claims 1-13) is drawn to a method of use of triaza compounds. Group III (Claims 14-23) is drawn to another method of use of triaza compounds. Group IV (Claim 24) is drawn to a pharmaceutical composition containing triaza compounds.

Applicants elect prosecution of the claims of Group II, claims 1-13, with traverse. This election is made to meet formal requirements of 37 CFR 1.143. It is believed that the Restriction Requirement is not properly reasoned or supported as is required under MPEP 800 and is thus improper. In fact, no reasoning or support is given for the restriction among Groups II, III and IV. Applicant further notes that the Examiner has not required any election of species.

The Restriction Requirement states that the claims of Groups I-IV "are directed to structurally dissimilar compounds such that the variable core created by the varying definition of C_a, C_b, C_c, C_d and W_e in formula I do not belong to a recognized class of chemical compounds in the art." The Action further states that "references anticipating one invention, would not render obvious the others." As a consequence, "separate searches in the literature as well as in the U.S. Patent Classification System would be required." It is further stated that "each group's compounds are made and used independently of each other could support separate patents." The compounds are said to differ significantly in chemical structure and that one skilled in the art would not consider such diverse structures as functional equivalents to each other. Only claims 24-28 (Group I) are directed to chemical compounds per se.

With respect to the claims of Groups II, III and IV, the only statement made is that "if Group II, III or IV is elected further restriction may be required by the Examiner." The Examiner has noted that the claims of all of Groups II, III and IV are classifiable into "class 514, various subclasses within." There is no reasoning or evidence on the record as required by MPEP 800, to indicate why restriction has been required among Groups II, III and IV. Based on the similarity in classification, it would appear that the

claims of Groups II, III and IV are directed to subject matter that is recognized as related in the art.

With respect to the reasoning presented on the record, Applicant is not aware that it is necessary to confine the members of a Markush group of compounds only to "a recognized class of chemical compounds in the art." MPEP 803.02 indicates that members of a Markush group:

"ordinarily must belong to a recognized physical or chemical class or to an art-recognized class. However, when the Markush group occurs in a claim reciting a process or a combination (not a single compound), it is sufficient if the members of the group are disclosed in the specification **to possess at least one property in common** which is mainly responsible for their function in the claimed relationship (emphasis added)."

In the present case, the compounds employed in the claims of Groups II, III and IV are related structurally as triaza macrocyclic compounds and are also related in properties in that they can down-regulate the level of CD4 expression on the surface of T-cells. It is believed that the Markush groupings of the claims of Groups II, III and IV are proper.

Applicants note that the method claims of Groups II and III are related in that they employ certain triaza compound to affect CD4 expression. The scope of compounds claimed as effective in the methods of Group II and III is the same. Claim 24 (Group IV) is directed to a pharmaceutical composition comprising one or more of the compounds of formula I. Again the scope of compounds in claim 24 is the same as that in the method claims. The claims of Group IV and those of Group II are related as composition and method of use.

Conclusion

It is believed that no Extension of Time is required and that no fees are due on submission of this response. If this is incorrect, please charge any deficiency or credit any overpayment under the foregoing rules to deposit account no. 07-1969.

Respectfully submitted,



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